



03/12/2019

Mr. Liam Knox
MuckRock News
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By Electronic Mail

Re: FOIA Request 874816

Dear Mr. Knox:

This letter constitutes an acknowledgement of your request made pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552. The Office of the Solicitor in the U.S. Department of Labor received your request on February 28, 2019, and it was forwarded here to the U.S. Department of Labor's Office of Labor-Management Standards (OLMS), on March 5, 2019, for a disclosure determination. Your FOIA requests:

- (1) Copies of "all files relating to any of the following nurses' unions, from 2000-2019:
 - United Nurses and Allied Professionals
 - Massachusetts Nurses Association
 - Service Employees International Union United Healthcare Workers East
 - National Nurses United
 - American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)
 - AFT Nurses and Health Professionals"
- (2) "... communications, memos, and other documents relating to healthcare workers strikes in this same time frame [2000-2019], such as the many that took place in Massachusetts, Vermont, Rhode Island, etc. in the past few years."

OLMS is committed to the principles of openness and transparency in making disclosure determinations, and it is the policy of the Department of Labor to disclose information to the maximum extent practicable. See 29 C.F.R. §70.3.

Initially, it is not necessary to make a request pursuant to the FOIA in order to obtain copies of reports filed under the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA),

including constitutions and bylaws, as well as LM reports. FOIA requests for public records that are available pursuant to 29 C.F.R. §70.53 are considered improper requests. Pursuant to 29 C.F.R. §70.53, these documents are public records and, as such, individuals can exercise the right to examine any such reports at, and/or purchase copies from, the OLMS through its Internet Public Disclosure Room at www.unionreports.gov and its Public Disclosure room at: U.S. Department of Labor, Office of Labor-Management Standards, 200 Constitution Avenue, NW, Room N-1519, Washington, DC 20210. You can also call the Disclosure Room directly at (202) 693-0125.

Additionally, to the extent your request asks for records beyond constitutions, bylaws, and annual reports it is overbroad in terms of seeking “all files” concerning the unions that you have indicated over the 20-year period cited. The portion of your request that relates to healthcare worker strikes is not properly directed to OLMS as this office has no jurisdiction over this aspect of labor-management relations, and, therefore, we are unlikely to have any responsive records for the entire period requested.¹

Please be advised that pursuant to 5 U.S.C. §552(a)(6)(A)(i) of the FOIA, federal agencies are required to determine within twenty days after the receipt of a request (not including weekends and legal holidays) whether to comply with such request and to notify the requestor of such determination, the rationale, and the right of the requestor to appeal any adverse determination.

When a FOIA request is received, it is identified as a "simple," "complex," or "expedited" request and is placed in one of these three queues. Each request within each queue is processed in the order in which it was received. We make every effort to process most requests within 20 working days. However, there are some exceptions that necessitate a longer processing period than 20 working days. Your request falls within the complex queue, exceeding 20 days, because, as demonstrated above, it would likely yield voluminous results.

OLMS has applied the Department’s FOIA regulations and determined that you constitute a Category 3 Requestor, “representative of the news media,” as defined at 29 C.F.R. §70.38(i). Thus, you will be responsible for reproduction costs, with the exception of the first 100 pages of reproduction which are provided without charge. See 29 C.F.R. §70.40(c)(3). Pursuant to 29 C.F.R. §§70.40(d)(2), reproduction costs are assessed at the rate of 15 cents per page. In accordance with departmental policy, we will assume that by filing this request you are willing to pay fees up to \$25.00. You will be notified in the event the estimated assessable costs are likely to exceed \$25.00.

This search combined with the subsequent review, reproduction, and disclosure determination will significantly exceed twenty days. Based on the anticipated volume of records to be reviewed and the number of locations to be searched, including retrievable archived records, your request is the type that constitutes “unusual circumstances” as defined in the FOIA, 5 U.S.C. Section 552(a)(6)(B).

The Open Government Act permits assessing costs for an additional 10 days beyond the 20 day FOIA period when there are “unusual circumstances.” Additionally, if OLMS determines that there are

¹ Records related to any strikes conducted by any unions, regardless of sector, may be maintained by State labor boards for public and/or private employees, and/or the National Labor Relations Board (NLRB) for private employees. See: <https://www.nlr.gov/news-publications/more-information/foia>.

more than 5,000 pages of responsive documents in addition to the unusual circumstances, then you will be charged applicable fees regardless of how long it takes to process your request.

OLMS recommends that you consider reducing the scope of your request to specific types of documents or cases. This would allow you to lower your duplication costs and hasten the receipt of information. When you consider how you might narrow the scope of your request, note that much of the material you have requested may be exempt from disclosure as privileged material. Non-disclosable material includes, but is not limited to, inter-agency or intra-agency memoranda or letters which would not be available by law to a private party in litigation (pre-decisional/deliberative material, attorney work-product, and attorney-client communications) pursuant to Exemption 5 of the FOIA, 5 U.S.C. §552(b)(5). Incorporated within Exemption 5 are virtually all civil discovery privileges, including the deliberative process privilege. In concept, the deliberative process privilege protects not merely the documents themselves, but also the integrity of the process. The privilege has been interpreted to permit an agency to withhold documents or portions of documents that reflect opinions, recommendations, and deliberations of agency personnel, which are part of the process of formulating government decisions and policies. The privilege also protects against misleading the public by disseminating material suggesting reasons for a course of action that may not have been the ultimate reasons for the agency's actions. *Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980). For discussions on other exempt material, see <https://www.justice.gov/oip/doj-guide-freedom-information-act-0>.


Please let us know in writing if you are interested in narrowing the scope of your request or withdrawing it altogether. If I do not hear from you regarding your willingness to reduce the scope of your request within 10 days from the date of this e-mail, your request will be administratively closed.

If you are undecided and have any questions concerning the procedural handling and processing of your inquiry, you may contact the OLMS FOIA Coordinator by email at OLMS-FOIA@dol.gov. The physical address is: OLMS FOIA Coordinator, Room N-5609, 200 Constitution Avenue, N.W., Washington, D.C., 20210. The telephone number is (202) 693-0123. Please refer to tracking number **FOIA #874816** in any future correspondence relative to this FOIA request.

Should you decide to narrow your request, OLMS will re-assess fees in accordance with any narrowed scope of your request. We will conduct our search and review of the records, then require advance payment before releasing the processed materials, pursuant to 29 C.F.R. §70.43(c)(1) of the DOL FOIA regulations.

Sincerely,

Andrew Auerbach
Deputy Director

By: 
Andrew Davis, Chief
Division of Interpretations and Standards